

PETITIONER:
HARIBHAU DAGDU TANDALE

Vs.

RESPONDENT:
INDUSTRIAL CO-OPERATIVE ASSOCIATION LIMITED & ORS.

DATE OF JUDGMENT: 08/10/1996

BENCH:
M.M. PUNCHHI, K. VENKATASWAMI.

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

Venkataswami, J.

This Appeal by Special Leave is preferred against a Division Bench Judgment of the Bombay High Court in W.P. NO. 390/82 dated 13th April, 1982. The learned Judges by the judgment under appeal have confirmed an Order of the State Government passed while exercising appellate as well as suo moto revisional jurisdiction in a matter arising out of The Maharashtra Co-operative Societies Act, 1960 (hereinafter called "the Act").

The third respondent herein purporting to exercise his powers under Section 102(1)(a) issued an interim winding up order dated 17.6.1974 and called upon the first respondent-society to show cause why a final order winding up the society should not be passed. The third respondent also simultaneously appointed the second respondent herein as Special Liquidator under Section 103 of the Act.

The first respondent in response to the notice dated 17.6.1974 gave a detailed reply objecting to the proposed final order of winding up and appointment of Special Liquidator under Section 103 of the Act. The first respondent, while requesting for vacation of the interim order requested for a personal hearing before passing final order. The third respondent, however, without affording the personal hearing requested by the first respondent and though the statute required giving of such personal hearing, confirmed the interim order under Section 102 of the Act on 12.8.1974.

The first respondent meanwhile aggrieved by the interim order of the third respondent dated 17.6.1974 preferred an appeal to the State Government as provided under Section 104 of the Act on 16.7.74. Initially, the fourth respondent (State Government) granted a stay on 26.8.74 but the same was vacated on 27.9.75 on the ground that the second respondent Liquidator has already assumed charge of the affairs of the society. While the appeal was pending before the fourth respondent and in spite of the fact of filing or appeal was brought to the notice of the second respondent, the special Liquidator brought an extent of 5 acres 31 gunthas of land belonging to the society for sale. The

appellant herein offered to purchase the said land for Rs. 22,000/- by his tender dated 10.7.75. A sale deed was finally executed in favour of the appellant on 11.9.78. Pursuant to the sale, the appellant was put in possession of the said land also. At that stage, when the Government came to know of the sale, issued notices to the second and third respondent invoking the suo moto power under Section 154 and called for the records of the sale transaction for the purpose of examining as to whether the transaction was legal. The appellant gave a detailed reply to the State Government inter alia contending that the Government have no authority to invoke the suo moto power to question the sale in his favour. The Government considered the appeal of the first respondent filed under section 104 of the Act and also the suo moto revision together and after personally hearing the appellant and respondents 1 to 3 held that 'when the appeal was pending with the appellate authority the subordinate authority has no right to dispose of any immovable and movable property which may adversely affect if the liquidation order were to be set aside by the appellate authority'. The fourth respondent further observed 'that the perusal of the records show that no hearing was given to the society and thereby the principles of natural justice had been violated. After giving reasons the fourth respondent also found that the order of winding up itself was uncalled for and consequently set aside the same. The sale in favour of the appellant was also set aside and the Liquidator was directed to hand over the charge of the society to the committee from whom he has taken the charge. The Government further directed the Liquidator to help the committee to take possession of the land from the appellant after paying all the necessary dues i.e. the price of the land paid by the appellant and other expenses, if any, incurred by the appellant.

Aggrieved by the order of the fourth respondent - State Government -dated 3.1.1982, the appellant moved the Bombay High Court to set aside the same and to sustain the sale in his favour. As noted earlier the learned Judges of Bombay High Court for well-considered reasons, overruling the arguments advanced on behalf of the appellant, confirmed the order of the State Government and dismissed the Writ Petition. The present appeal is against the order of the Bombay High Court.

Mr. Bhimrao Naik, learned Senior Counsel, appearing for the appellants has pressed before us the following points in assailing the judgment and order of the Bombay High Court. The points were that no appeal lay to the Government (fourth respondent) against an interim order of winding up and appointment of Liquidator. The fourth respondent was not justified in invoking suo moto revisional powers for setting aside the confirmation order of winding up passed under Section 102(2) of the Act; that the Government have not seriously applied their mind, is apparent from the order itself. Because though the appeal filed by the society was against the interim order, the Government have set aside the confirmation order of winding up. In any event, Section 103(6) specifically provides that all acts done and proceedings taken by the liquidator shall be binding on the society even if the interim order has subsequently been cancelled and that being the position, the sale by the liquidator ought not to have been set aside merely on the ground that interim winding up order was not sustainable. He also contended that the interim order of winding up having been made final Subsequently by the third respondent by an independent order dated 12.8.78 and the society having not

challenged the final order, the appeal before the State Government against the interim order must be deemed to have become infructuous as the interim order merges with the final order.

Mr. I.G. Shah, learned Senior Counsel, appearing for the first respondent-society took us through the judgment of the Bombay High Court and relied on the reasons given thereon as his arguments.

On a careful consideration of the rival arguments and after carefully going through the judgment of the Bombay High Court, we are of the view that the learned Judges of the Bombay High Court have given well-founded reasonings for sustaining the order of the State Government and we shall give our reasons immediately.

For appreciating the contentions raised before us, it is necessary to set out relevant portions of Section 102, 103, 104, 105 and 106 of the Act. Chapter 10 in the Act deals with liquidation. Section 102(1)(a) reads as follows:

" (1) If the Registrar-

(a) after an inquiry has been held under section 83 or an inspection has been made under section 84 or on the report of the auditor auditing the accounts of the society, or".

(b).....

(c).....

is of the opinion that a society ought to be wound up, he may issue an interim order directing it to be wound up.

Admittedly the order of winding up was based on the report of the auditor. Hence, the other parts of Section 102(1) are unnecessary.

The relevant portion of Section 103 reads as follows:-

103. (1) When an interim order is passed under the last preceding section or a final order is passed under that section, for the winding up of a society, the Registrar may, in accordance with the rules, appoint a person to be Liquidator of the society, and fix his remuneration.

(2) On issue of the interim order, the officers of the society shall hand over to the Liquidator the custody and control of all the property, effects and actional claims to which the society is or appears to be entitled, and of all books, records and other documents pertaining to the business of the society and, shall have no access to any of them.

(3) *****

(4) *****

(5) The whole of the assets of the society shall on the appointment of Liquidator under section vest in such Liquidator, and notwithstanding anything contained in any law for the time being in force, if any immovable

property is held by a Liquidator on behalf of the society, the title over the land shall be complete as soon as the mutation of the name of his office is effect, and no Court shall question the title on the ground of dispossession, want of possession or physical delivery of possession.

(6) In the event of the interim order vacated, the person appointed as Liquidator shall hand over the property, effects and actionable claims and books, records and other documents of the society to the officers who had delivered the same to him. The acts done, and the proceedings taken by Liquidator, shall be binding on the society, and such proceedings shall, after the interim order has been cancelled under the preceding section, be continued by the officers of the society.'

(104) The committee or any member, of the society ordered to be woundup, may, within two months from the date of the issue of the order made under section 102, appeal to the State Government: Provided that no appeal shall lie against an order issued under sub-clause (i), (ii) and (iii) of clause (c) of sub-section (1) of section 102.

(2) *****

105. (1) The Liquidator appointed under section 103 shall have power, subject to the rules and the general supervision, control and direction of the Registrar,-

(a) *****

(b) *****

(c) to sell the immovable and movable property and actionable claims of the society by public auction or private contract, with power to transfer the whole or part thereof to any person or body corporate, or sell the same in parcels;

106. After expiry of the period for appeal against the order made under sub-section (10 of Section 102 or where the appeal has been dismissed, the order for winding up shall be effective and shall operate in favour of all the creditors and of all the contributories of the society, as if it had been made on the joint petition of creditors and contributories. When a winding up order becomes effective, the Liquidator shall proceed to realise

the assets of the society by sale or otherwise, and no dispute shall be commenced or, if pending at the date of the winding up order, shall be proceeded with, against the society, except by leave of the Registrar and subject to such terms as the Registrar may impose. The Registrar, may of his opinion, however, entertain or dispose of any dispute by or against the society."

A careful reading of the above provisions show that as soon as an interim order of winding up was passed and a Liquidator was appointed, he gets only the custody and control of all the property, effects and actionable claims to which the society appears to be entitled, and of all books, records and other documents pertaining to the business of the society. It is only under Section 103(5) the assets of the society vest in the Liquidator. No doubt under Section 105(1)(c), the Liquidator is empowered to sell immovable and movable property of the society by public auction or private contract but this power must be read in conjunction with the power to sell given under Section 106 which says that after a winding up becomes effective, the Liquidator shall proceed to realise the assets of the society by sale or otherwise. The winding up order becomes effective only after the expiry of the period for appeal against the order made under sub-section (1) of Section 102 or where the appeal has been dismissed. In other words, if an appeal is filed and the same is pending, the winding up order will not become effective and the Liquidator shall not proceed to realise the assets of the society by sale or otherwise. This is exactly the reason given by the Government while setting aside the sale stating that when the appeal was pending, the Liquidator should not have proceeded with the sale especially when he had knowledge of the pendency of the appeal. The High Court also has given considered reasons to reconcile the sale under Section 105 and the sale under Section 106 of the Act. The High Court observed as under:

"The power of sale conferred on the Liquidator under clause (a) of sub-section (1) of section 105 shall have to be read along with the powers of sale contemplated under section 106 of the Act. Section 106, on the fact of it, deals with the powers of the liquidator after the order of winding up becomes effective. The legislature could not have thought it necessary to confer powers of sale both under Section 105 and under Section 106 of the Act. If both the Section confer the power of sale it becomes the duty of the Court to find out the respective spheres for exercise of these powers. Looked at from this point of view, section 105 appears to have been intended to cover cases where sale of the property cannot await the disposal of the appeal, while Section 106 deals with the power of sale when

the winding up order has become final and, therefore, effective. It is difficult to conceive that the Liquidator could have intended to authorise the sale of the property without any urgency whatsoever, even when the appeal was pending. Pending appeal can result both in the confirmation of the interim winding up order as well as in the vacating thereof. The sale powers under Section 105 could have been intended only to meet such cases where sale of perishable articles or some other property of such nature cannot for some reason or the other wait till the disposal of the appeal."

We agree with the above reasoning of the High Court. We are not able to agree with the learned Senior Counsel for the appellant that no appeal lay against the interim winding up order and simultaneous appointment of the Liquidator. It is common ground that the third respondent invoked Section 102 on the basis of the report of the Auditor. Therefore, the relevant provision for passing winding up order is 102(1) (a). Section 104 expressly provided an appeal to the Government against an order under Section 102 which includes order under section 102(1)(a). However proviso excludes such appeal being available to orders under sub-clause (i)(ii) or (iii) of clause (c) of sub-section (1) of Section 102. In the light of the above, it is futile to contend that no appeal lay against an order passed under Section 102(1)(a).

The Government while considering the appeal of the first respondent under Section 104 and on coming to know of the developments pending appeal namely the sale of society's land invoked the power under Sec. 154 to find out the propriety and legality of the sale. It is not the case of the appellant that an appeal lies against the sale by the liquidator. Therefore, the exercise of power by the Government under Section 154 cannot be faulted. Here again there is no substance in the argument of the learned Senior Counsel. The other contention that the interim order merges with final order and therefore, in the absence of any separate appeal against the final order, the appeal against interim order will become infructuous, is also without substance. If the foundation is knocked off, structure standing on it cannot stand in the air, automatically falls down. The interim order is expressly liable to be confirmed or vacated by the authority who passed the interim order. That being the position, the appellate authority who has a right to decide the correctness of an interim order cannot be denuded from considering the same on the ground that a final order has been passed pending appeal. The merger theory will not apply to the instant case. Therefore, the High Court was right in rejecting such a contention. The contention based on Section 103(6) also not acceptable as "acts done" contemplated in that section will cover only legally carried out acts and not otherwise. Here the sale by liquidator pending appeal before Government was in contravention of sections 105 and 106. Hence no help can be derived from section 103(6) of the Act.

In the result, none of the arguments advanced before us on behalf of the appellant, appeal to us. The appeal is therefore, dismissed. However, there will be no order as to

costs.

JUDIS